IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

C.R. No. 4519 of 2006

Date of Decision: August 29, 2006

Adarsh Kumar

…..Petitioner

Vs.

Mrs. Kailash Mehra and others

…..Respondents

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.

Present:- Mr. K.S. Boparai, Advocate
for the petitioner.

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**M.M.S. BEDI, J.** (ORAL)

Aggrieved by order dated August 8, 2006, passed by trial Court, rejecting the application of the defendant- petitioner to re-cast the issues, this revision petition has been preferred mainly on the ground that while framing the issues in the year 1997/1999, the trial court had not specifically mentioned regarding onus of the party who has to discharge the issues particularly issue Nos. (i), (viii), (ix), (x), (xi) and (xii).

Circumstances of this case do not warrant the exercise of revisional jurisdiction under Article 227 of the Constitution of India to

rectify the error because as per Section 102 of the Indian Evidence Act, 1872, the burden of proof in a suit would lie on that person who would fail if no evidence at all were given on either side. Even order 18 Rue 3 CPC provides that where there are several issues, the burden of proving some of which lies on the other party, the party beginning may, at his option, either produce his evidence on those issues or reserve it by way of answer to the evidence produced by the other party. The issues were framed in the year 1997 on the basis of the pleadings of the parties and the case has admittedly reached at a stage of defendant's evidence.

I do not find any force in the contention of the counsel for the petitioner that on account of the vagueness regarding the onus, it is not known to the parties to the litigation as to what evidence is to be produced by a party on issue Nos. (i), (vii), (x), (xi) and (xii). There is no ground to interfere in the impugned order because of the reason that the defendant-petitioner will be entitled to always legally derive a benefit in case the plaintiff has failed to lead any evidence on a particular issue framed on the basis of the plea taken by him.

Dismissed.

August 29, 2006 (M.M.S.BEDI)
sanjay JUDGE